

STATE OF MICHIGAN
COURT OF APPEALS

PETER POPEK TRUST, by DIANE
DRAUGELIS, Trustee,

Plaintiff-Appellant,

v

TOWNSHIP OF HOWELL,

Defendant-Appellee.

UNPUBLISHED
December 20, 2011

No. 300834
Tax Tribunal
LC No. 00-38373

Before: WILDER, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

Petitioner, as successor trustee of the Peter Popek Trust, appeals as of right from the Tax Tribunal's order dismissing her claim for lack of jurisdiction. We affirm.

Petitioner's case arises out of her challenge to a special assessment levied on her property in Howell Township. On November 27, 2006, the Howell Township Board of Trustees approved a special assessment to facilitate the construction of an extension to the township's water and sewer systems. The expansion of the sewer and water systems was necessary to accommodate a proposed development. Petitioner attended the hearing, but did not protest the assessment.

Petitioner ceased paying her portion of the special assessment, and in February of 2010, the Township of Howell instituted foreclosure proceedings against her in Livingston Circuit Court. Petitioner moved to stay the foreclosure proceedings and to refer the matter to the Michigan Tax Tribunal. The Tax Tribunal dismissed petitioner's claim, *sua sponte*, for lack of jurisdiction. The tribunal determined that petitioner failed to comply with the prerequisites found in MCL 205.735 for invoking its jurisdiction, and dismissed her claim. She now appeals this decision.

In order to invoke the jurisdiction of the Tax Tribunal, a petitioner challenging a special assessment must do two things. First, the petitioner must protest the special assessment before

the township board that adopted it. MCL 205.735(2)¹; *Covert Twp v Consumers Power Co*, 217 Mich App 352, 355-356; 551 NW2d 464 (1996). Second, the petitioner must file a written petition for review before the Tax Tribunal within 35 days of the township board's final decision on the special assessment. MCL 205.735(3)²; *Leahy v Orion Twp*, 269 Mich App 527, 532; 711 NW2d 438 (2006). A township board issues a "final decision" on a special assessment when it renders a decision to adopt the assessment. *Michigan's Adventure, Inc v Dalton Twp*, 290 Mich App 328, 333; 802 NW2d 353 (2010). If a petitioner fails to fulfill either requirement, the Tax Tribunal must dismiss the case because it lacks jurisdiction over it. *Covert Twp*, 217 Mich App at 355-356; *Leahy*, 269 Mich App at 532.

In this case, petitioner failed to comply with the jurisdictional prerequisites found in MCL 205.735. First, she failed to protest the special assessment at the November 27, 2006 hearing, as required by MCL 205.735(2). Indeed, rather than protest the decision, she specifically requested that it apply to her property. The failure to protest is sufficient to support the Tax Tribunal's dismissal for lack of jurisdiction. *Covert Twp*, 217 Mich App at 355-356. In addition to her failure to protest the special assessment, petitioner also failed to petition the Tax Tribunal within 35 days of the township's final decision, as required by MCL 205.735(3). Rather than comport with the 35 day requirement, petitioner waited nearly four years before she petitioned the Tax Tribunal. Accordingly, her claim was untimely, and the Tax Tribunal properly dismissed it for a lack of jurisdiction. *Leahy*, 269 Mich App at 532.

Nonetheless, petitioner argues that the jurisdictional prerequisites of MCL 205.735 do not apply when a petitioner challenges the validity of the special assessment, rather than its amount. However, our case law offers no support for her position. Indeed, in *Simmons Airlines, Inc v Negaunee Twp*, 192 Mich App 456, 462; 481 NW2d 760 (1992), we held that the Tax Tribunal properly dismissed a petitioner's challenge to the validity of a tax because the petitioner failed to comply with MCL 205.735. Accordingly, petitioner's argument is without merit.

Petitioner also contends that the Tax Tribunal's decision to dismiss her claim violated her right to procedural due process by depriving her of a hearing on the case. Generally, procedural due process requires notice and an opportunity to be heard. See, e.g., *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 213; 761 NW2d 293 (2008). MCL 211.741 requires township boards to provide individuals with notice of a special assessment hearing, as well as an opportunity to be heard. Petitioner does not allege that this procedure was not followed in her case. Furthermore, the record reveals that petitioner attended a hearing on the special assessment on November 27, 2006, and that she acquiesced to the special assessment at that time. Therefore, petitioner was not denied procedural due process in this matter.

¹ "For an assessment dispute as to the valuation of property or if an exemption is claimed, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute" MCL 205.735(2).

² "[T]he jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, determination, or order that the petitioner seeks to review." MCL 205.735(3).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Michael J. Talbot
/s/ Deborah A. Servitto